

R E M A R K S

Reconsideration of the application in view of the following remarks is respectfully requested. No claims are currently being amended, canceled, or added. Therefore, claims 1-88 are pending in the application.

Information Disclosure Statement

Applicants have filed another Information Disclosure Statement herewith through the USPTO's EFS-Web system. Applicants request that the Examiner consider the references cited therein and return a copy of the initialled and signed PTO-1449 Form with the next paper in this application.

Claim Rejections under 35 U.S.C. 103

Claims 1-88 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,594,699 to Sahai et al. ("Sahai et al.") in view of U.S. Patent Application Publication No. 2003/0045275 to McDonagh et al. ("McDonagh et al."). Applicants respectfully traverse these rejections.

Applicants independent claim 1 recites that the plurality of predefined service levels "set combinations of transfer parameters". Applicants independent claim 1 also recites "determining whether an upgrade could make any additional of the plurality of predefined service levels available to the user device".

The Examiner acknowledges that Sahai et al. fails to teach the later limitation. (Final Office Action mailed 1/24/07, page 3, end of first paragraph). As such, the Examiner alleges that

McDonagh et al. teaches this limitation in Figure 1, page 2, paragraphs [0046-0049], and pages 4-5, paragraphs [0100-0105]. (Final Office Action mailed 1/24/07, page 3, second paragraph). Applicants respectfully disagree that McDonagh et al. teaches this limitation.

Specifically, McDonagh et al. teaches a system for automatically capturing consumer data from a wireless local area network of consumer devices and using the captured data to automatically update a user profile database with user profile data for use in making service offers to the user. (McDonagh et al., paragraphs [0006-0008]). Some of the "service offers" that McDonagh et al. discloses are: currency rates (paragraph [0062]); special offers in the form of advertisements, MP3, E-Mail, JPG/BMP, basic text, video streams, and news (paragraph [0112]); latest sports results, news groups (paragraph [0114]); maps and share prices (paragraph [0117]); traffic information (paragraph [0135]); and rugby match updates (paragraph [0178]).

McDonagh et al. does not disclose a service offer as being "determining whether an upgrade could make any additional of the plurality of predefined service levels [that set combinations of transfer parameters] available to the user device", as recited in Applicants' claim 1. ***In fact, the word "upgrade" cannot even be found anywhere in McDonagh et al.***

One of the paragraphs of McDonagh et al. cited by the Examiner states:

"[0048] At a high level, in a step I the mobile phone 2 connects with a Bluetooth management system (BMS) 3 and, transparently to the user, uploads data concerning the Bluetooth devices 1. The data is collected using the Service Discovery Protocol Bluetooth mechanism. In a step II the BMS 2 processes

this data and updates a consumer personalisation database 4 to improve personalisation of service offers for the user of the mobile phone 2. The BMS 3 then, in a step III matches the personalisation attributes with available services. In a step IV it proactively transmits via the mobile network service data to the user's mobile phone 2. The phone 2 then, using its bridging interfaces, forwards services data to the Bluetooth devices 1."

(McDonagh et al., paragraph [0048]).

This paragraph states that a consumer personalization database 4 is updated to improve personalization of service offers for the user. But updating a consumer personalization database is not at all the same as determining whether an upgrade could make any additional of a plurality of predefined service levels that set combinations of transfer parameters available to a user device, as is recited in Applicants' claim 1. That is, the "updating" in McDonagh et al. has nothing to do with determining whether an upgrade could make any additional of a plurality of predefined service levels that set combinations of transfer parameters available to a user device.

The above-quoted paragraph of McDonagh et al. also states that personalization attributes are matched with available services, which are then transmitted and forwarded to the Bluetooth devices 1. But again, there is nothing in McDonagh et al. that discloses or suggests that the "services" are a determination of whether an upgrade could make any additional of a plurality of predefined service levels that set combinations of transfer parameters available to a user device, as is recited in Applicants' claim 1.

Therefore, because McDonagh et al. does not disclose Applicants' claimed step of "determining whether an upgrade could

make any additional of the plurality of predefined service levels available to the user device", the rejection of Applicants' claim 1, as well as independent claims 30 and 58, should be withdrawn.

Another reason the rejections of Applicants' independent claims 1, 30 and 58 should be withdrawn is that there would be no motivation for a person of ordinary skill in the art to somehow modify Sahai et al.'s system to incorporate the teachings of McDonagh et al. This is because any such modification would change Sahai et al.'s principal of operation and make it unsatisfactory for its intended purpose.

Namely, in Sahai et al. "[a] client-server interaction is characterized by an initial service request from the client to the server." (Sahai et al., col. 1, lines 33-34). That is, with Sahai et al.'s system a server receives a request for service from the client. (Sahai et al., col. 3, lines 5-10, and col. 1, line 61 to col. 2, line 34). Whereas, in McDonagh et al. "the user does not even need to request services as they are dynamically offered by the BMS 2." (McDonagh et al., paragraph [0049]). That is, in McDonagh et al. service offers are automatically provided to the user based on user profile data. (See McDonagh et al., Abstract and paragraphs [0006-0010]).

As such, the systems of Sahai et al. and McDonagh et al. have different principals of operation. Any attempt to modify Sahai et al.'s system with the teachings of McDonagh et al. would change Sahai et al.'s principal of operation from that of receiving an initial service request from the client to that of automatically pushing service offers to the user. Such a modification would also make Sahai et al.'s system unsatisfactory for its intended purpose of responding to the request from the client because the modification would change Sahai et al.'s

system into one that instead automatically pushes service offers to the user.

Because such modifications would change Sahai et al.'s principal of operation and make it unsatisfactory for its intended purpose, there would be no motivation for a person of ordinary skill in the art to attempt the modifications. Therefore, a *prima facie* case of obviousness of Applicants' independent claims 1, 30 and 58 cannot be established based on the combination of Sahai et al. and McDonagh et al., which means the rejections should be withdrawn.

Applicants' independent claim 16 recites "wherein selecting a service level is performed at a network service manager device independent of a network provider from which the content is transferred". The Examiner acknowledges that Sahai et al. fails to teach this limitation. (Final Office Action mailed 1/24/07, page 7, first paragraph). As such, the Examiner alleges that McDonagh et al. teaches this limitation in the Abstract and on page 3, paragraph [0069]. (Final Office Action mailed 1/24/07, page 7, second paragraph). The Examiner presumably asserts that McDonagh et al.'s Bluetooth management system (BMS) performs the recited limitation. Applicants respectfully disagree that McDonagh et al. teaches this limitation.

Specifically, with respect to the term "service level", Applicants' independent claim 16 recites that the service level "may govern the transfer of content to the user device" and that each service level is "further associated with minimum requirements relating to the configuration of the user device and setting combinations of transfer parameters".

There is nothing in the portions of McDonagh et al. cited by the Examiner that discloses a network service manager device that

selects a service level that may govern the transfer of content to a user device and that is further associated with minimum requirements relating to the configuration of the user device and setting combinations of transfer parameters, as is recited in Applicants' claim 16. The Examiner relies on Paragraph [0069] of McDonagh et al. But that paragraph merely states that the BMS performs database management and service matching operations. McDonagh et al. does not disclose or suggest anything about selecting a service level that may govern the transfer of content to a user device and that is further associated with minimum requirements relating to the configuration of the user device and setting combinations of transfer parameters, as is recited in Applicants' claim 16.

Therefore, because McDonagh et al. does not disclose Applicants' claimed step of "wherein selecting a service level is performed at a network service manager device independent of a network provider from which the content is transferred", the rejection of Applicants' claim 16, as well as independent claims 44 and 72, should be withdrawn.

In addition, the above-described lack of motivation to combine Sahai et al. with McDonagh et al. also applies here, which provides another reason why the rejections of Applicants' independent claims 16, 44 and 72 should be withdrawn.

Finally, the rejections of dependent claims 2-15, 17-29, 31-43, 45-57, 59-71 and 73-88 should also all be withdrawn for at least the above same reasons due to each of their dependence on their respective independent claims.

Fees Believed to be Due

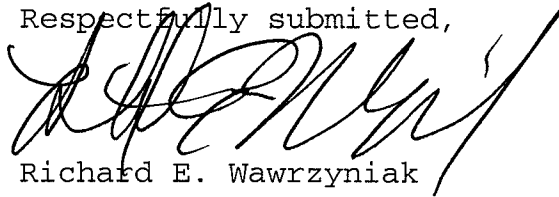
No extra claims fees are believed to be due.

Amendment
App. No. 09/903,308

C O N C L U S I O N

By way of this response, Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Richard E. Wawrzyniak at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,



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